

OUTTEN & GOLDEN LLP

Wayne N. Outten

Anne Golden

Adam T. Klein

Laurence S. M...

Gary Phelan

Kathleen Per...

Justin M. Swartz

Jack A. Ranner

Wendi S. L...

Carmelyn R. Melillo

Tammy Marzigliano

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #:

DATE FILED: 11 DEC 2009

Advocate for Workplace Fairness

December 10, 2009

Allegra L. Fishel

Lewis M. Steel

Nantiya Ruan

Deborah L. McKenna

René S. Roupinian

Julia Griffin Murphy

Samuel R. Miller

Delyanne D. Barros

Rachel M. Bien

Katherine Blostein

Molly Brooks

Cara E. Greene

Seth M. Marnin

Ossai Miazad

Melissa Pierre-Louis

Lauren Schwartzreich

Juno Turner

Via Email and Hand Delivery

Honorable Paul A. Crotty

United States District Court for the Southern District of New York

United States Courthouse

500 Pearl Street, Room 735

New York, New York 10007-1312

Re: *Sand v. Greenberg*, 08 Civ. 7840 (PAC)

Dear Judge Crotty:

We represent Plaintiffs in the above-referenced matter. We write to respectfully request a brief extension to the deadline for Plaintiffs to file their opposition to Defendants' request to modify or rescind their offer pursuant to Rule 68 of the Federal Rules of Civil Procedure. Plaintiffs' submission is currently due on December 15, 2009, at which time I will be in Chicago on business, returning on the evening of the 15th. Plaintiffs therefore request that the deadline be extended until 1:00 p.m. on December 16, 2009. This request does not prejudice Defendants because the Court's briefing schedule does not contemplate a reply. Defendants do not consent to this request for a thirteen-hour extension for the reasons set forth in the attached email. Ex. A. Plaintiffs note that they have consented to each request for adjournment made by Defendants. See, e.g. Ex. B.

We do not believe that this adjustment to the briefing schedule will affect any other deadlines, although the parties are scheduled to appear before Your Honor on December 18, 2009. If the extension we request would put the Court in a difficult position, we understand and will withdraw our request. No previous extensions have been requested.

Thank you for your attention to this matter.

Very truly yours

Justin M. Swartz

Enclosures

3 Park Avenue, 29th Floor New York, NY 10016 Tel 212-245-1000 Fax 212-977-4005

4 Landmark Square, Suite 201 Stamford, CT 06901 Tel 203-363-7888 Fax 203-363-0333

og@outtengolden.com www.outtengolden.com

NO ENDORSED

12/11/2009
The extension is
granted
So ordered
Paul H. Smith
USDC

Hon. Paul A. Crotty
December 10, 2009
Page 2 of 2

cc: Carolyn Richmond, Esq. (by email and fax)
Eli Freedberg, Esq. (by email and fax)
Jay S. Berke, Esq. (by email and fax)
D. Maimon Kirschenbaum, Esq. (by email)

EXHIBIT A

Turner, Juno

From: Richmond, Carolyn D. [CRichmond@foxrothschild.com]
Sent: Thursday, December 10, 2009 5:03 PM
To: Turner, Juno; Freedberg, Eli Z.
Cc: Swartz, Justin; Maimon Kirschenbaum
Subject: RE: Sand v. Greenberg - consent for brief extension

Hi Juno:

We received your messages and tried calling you back but you did not pick up the phone.

For several reasons Defendants do not consent to your request for an adjournment. First, the fact that Mr. Swartz is traveling should be irrelevant because no fewer than three other partners, besides Mr. Swartz, have filed notices of appearance in this case on behalf of Plaintiffs—not to mention Joseph, Herzfeld, Hester & Kirschenbaum. (I also imagine that laptops and faxes are available for Mr. Swartz to review the brief). Any one of these partners could certainly approve Plaintiffs' response to Defendants' letter. In addition, as both Mr. Steele and Mr. Klein have taken depositions in this case (whereas Mr. Swartz has neither taken nor defended a deposition) and as Mr. Swartz was not involved in this lawsuit until Ms. Neilan's recent departure, any one of these aforementioned partners, seems more than familiar enough with the lawsuit to finalize Plaintiffs' letter to the Court.

Second, at the November 17, 2009 conference, Plaintiffs' stated that they would need only one week to respond. See Civil Conference Transcript, 12:13-22 (Nov. 17, 2009). Judge Crotty however, graciously provided Plaintiffs with two weeks to complete their response to Defendants' letter. Despite the intervening Thanksgiving holiday and Defendants own travel schedules, Defendants still completed their filing within the time frame allotted. It would be inequitable, therefore, to allow Plaintiffs to have more than two weeks to draft their response.

Third, granting this extension would effectively preclude Defendants from having time to prepare a response to Plaintiffs' letter because the Court conference in which Judge Crotty is expected to rule on this issue is currently scheduled for November 18th at 10:30 am. Defendants would not be able to reply in the day and a half between Plaintiffs' proposed deadline and the scheduled conference.

Finally, we have reached this moment because Plaintiffs' failed to call us in good faith to discuss the Offer of Judgment upon receipt. While Mr. Swartz's December 1st email to me was at the eleventh hour seeking to avoid the accrual of more of Plaintiffs' attorneys fees, a similar phone call or email to me upon receipt of the Offer (if there was any uncertainty on their part) certainly would have avoided what was foreseeable attorney fees and unnecessary delay. Accordingly, Defendants will not support a request for an extension of time.

Best,

Carolyn D. Richmond
Partner
Fox Rothschild, LLP
100 Park Avenue
New York, New York 10017
(212) 878.7983
(212) 692.0940 fax
crichmond@foxrothschild.com
www.foxrothschild.com

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient,

12/10/2009

any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

From: Turner, Juno [mailto:jturner@outtengolden.com]
Sent: Thursday, December 10, 2009 1:50 PM
To: Richmond, Carolyn D.; Freedberg, Eli Z.
Cc: Swartz, Justin
Subject: Sand v. Greenberg - consent for brief extension

Counsel -

I left each of you a message about this a few minutes ago. Plaintiffs plan to ask the Court for a brief extension to the deadline for our filing on the Rule 68 dispute because Justin will be travelling on business until the evening of December 15th. We will request an extension until December 16th at 1:00 p.m. Please let us know whether you consent to this brief extension and, if you do not consent, the reason for your refusal. Thanks.

Juno

Juno Turner
Outten & Golden LLP
Advocates for Workplace Fairness
3 Park Avenue 29th Floor
New York, NY 10016
Tel: (212)-245-1000
Fax: (212)-977-4005
www.outtengolden.com

This e-mail and any attachments are confidential and are intended solely for the use of the addressee(s). This communication may contain material that is protected by the attorney-client privilege or other privileges or doctrines. If you are not the addressee or an addressee's agent, you may not use, disseminate, forward, print, or copy this e-mail; doing so may violate the addressee's rights. If you have received this e-mail in error, please notify us immediately by e-mail, og@outtengolden.com, or by telephone, 212-245-1000. Thank you.

Please consider the environment before printing this email.

ATTENTION:

IRS CIRCULAR 230 DISCLOSURE:

Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

This e-mail contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the Individual(s) named above. If you are not the intended recipient of this e-mail, or the employee or agent responsible for delivering this to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone at (215)-299-2167 or notify us by e-mail at helpdesk@foxrothschild.com. Also, please mail a hardcopy of the e-mail to Fox Rothschild LLP, 2000 Market Street, Philadelphia PA 19103-3291 via the U.S. Postal Service. We will reimburse you for all expenses incurred.

12/10/2009

Thank you.

EXHIBIT B

Swartz, Justin

From: Freedberg, Eli Z. [EFreedberg@foxrothschild.com]
Sent: Thursday, November 05, 2009 6:19 PM
To: Schwartzreich, Lauren; Richmond, Carolyn D.
Cc: Steel, Lewis; Swartz, Justin; Turner, Juno
Subject: RE: November 16 Court conference

Thank you for the courtesy. We will draft a letter to Judge Crotty and send it to you for review.

Eli Z. Freedberg
Attorney at Law
Fox Rothschild LLP
100 Park Avenue
New York, NY 10017
212.878.7970-direct
efreedberg@foxrothschild.com
www.foxrothschild.com

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

From: Schwartzreich, Lauren [mailto:les@outtengolden.com]
Sent: Thursday, November 05, 2009 6:18 PM
To: Freedberg, Eli Z.; Richmond, Carolyn D.
Cc: Steel, Lewis; Swartz, Justin; Turner, Juno
Subject: RE: November 16 Court conference

Eli,

We will consent to a brief adjournment. We are available at any time on the 17th, before 3:00 pm on the 19th and after 11:30 am on the 20th.

Best Regards,

Lauren

This e-mail and any attachments are confidential and are intended solely for the use of the addressee(s). This communication may contain material that is protected by the attorney-client privilege or other privileges or doctrines. If you are not the addressee or an addressee's agent, you may not use, disseminate, forward, print, or copy this e-mail; doing so may violate the addressee's rights. If you have received this e-mail in error, please notify us immediately by e-mail, og@outtengolden.com, or by telephone, 212-245-1000. Thank you.

Lauren Schwartzreich
Associate
Outten & Golden LLP
3 Park Avenue 29th Floor
New York, NY 10016
Tel: (212)-245-1000
Fax: (646)-509-2085
les@outtengolden.com
www.outtengolden.com

From: Freedberg, Eli Z. [mailto:EFreedberg@foxrothschild.com]

12/10/2009

Sent: Thursday, November 05, 2009 5:57 PM
To: Schwartzreich, Lauren; Richmond, Carolyn D.
Subject: November 16 Court conference

Hi Lauren:

Carolyn has a doctor appointment scheduled for November 16, 2009 with a specialist that cannot be rescheduled. Consequently, we would like to ask Judge Crotty to reschedule the conference currently scheduled for the 16th to either the 17th, 19th or 20th. Please let us know if you are available on any of these days, and whether you consent to this brief request for an adjournment.

Thanks,
Eli

Eli Z. Freedberg
Attorney at Law
Fox Rothschild LLP
100 Park Avenue
New York, NY 10017
212.878.7970-direct
efreedberg@foxrothschild.com
www.foxrothschild.com

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

ATTENTION:

IRS CIRCULAR 230 DISCLOSURE:

Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

This e-mail contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the Individual(s) named above. If you are not the intended recipient of this e-mail, or the employee or agent responsible for delivering this to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone at (215)-299-2167 or notify us by e-mail at helpdesk@foxrothschild.com. Also, please mail a hardcopy of the e-mail to Fox Rothschild LLP, 2000 Market Street, Philadelphia PA 19103-3291 via the U.S. Postal Service. We will reimburse you for all expenses incurred.

Thank you.

ATTENTION:

IRS CIRCULAR 230 DISCLOSURE:

Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

This e-mail contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the Individual(s) named above. If you are not the intended recipient of this e-mail, or the employee or agent responsible for delivering this to the intended recipient, you are hereby notified that any dissemination or copying

12/10/2009